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Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1997

SYNATEL INSTRUMENTATION LTD.,

Petitioner,

vs.

MARK VANDELUNE and JULIE VANDELUNE, Individually and as Parents of CHELSEA VANDELUNE and TASIA VANDELUNE,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Should a foreign manufacturer whose product is ultimately used in the forum state solely as a result of the independent activities of unrelated entities be subjected to personal jurisdiction in that state under the Constitution of the United States?

2. Did the Eighth Circuit Court err in failing to apply the opinion by Justice O'Connor in *Asahi Metal Industry Co. v. The Superior Court of California*, 480 U.S. 102, 112 (1987), which stated that the introduction of products into the "stream of commerce" without a "substantial connection" between the manufacturer and the forum is not enough to satisfy the due process requirement of minimum contacts in a product liability case?

3. Did the Eighth Circuit Court err in failing to apply the opinion by Justice Stevens in *Asahi*, which stated that whether placement of products into the "stream of commerce" rises to the level of purposeful availment of the benefits and protections of the forum requires a constitutional determination that is affected by the volume, the value, and the hazardous character of the component?

4. Did the Eighth Circuit Court err in finding that the presence in the forum state of eighty-one Synatel products valued at a total of only approximately $8,000 was sufficient "purposeful availment" of the benefits of the forum state by Synatel to warrant personal jurisdiction under the Constitution of the United States?

STATEMENT OF INTERESTED PARTIES

Synatel has no parent or nonwholly owned subsidiaries. 4B Elevator Components Unlimited was a co-defendant with Synatel in the action below and was summarily dismissed from the case. 4B is not the subject of this certiorari petition.

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Appendix B — Order Of The United States District Court For The Northern District Of Iowa, Central Division Filed March 13, 1997 ..... 11a

Petitioner Synatel Instrumentation Ltd. ("Synatel") respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eighth Circuit. This case presents a question of extreme importance in the international commerce arena, *i.e.*, whether a foreign manufacturer having almost no contacts with the United States can be forced into a United States court to defend a products liability suit in disregard of the Constitution of the United States.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Eighth Circuit is reported at *Vandelune v. 4B Elevator Components Unlimited and Synatel Instrumentation Ltd*, 148 F.3d 943 (8th Cir. June 30, 1998) (App. A).[1] The opinion of the District Court in *Vandelune v. 4B Elevator Components Ltd. and Synatel Instrumentation Ltd.*, Civ. No. 95-30-87 (N.D. Iowa, March 13, 1997), is unpublished (App. B).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on June 30, 1998. No Petition for Rehearing was submitted.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part that:

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1. Documents in the accompanying appendix are referred to as App. A and App B.

> No state shall . . . deprive any person of . . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The fundamental question in this case is whether a foreign manufacturer's act of placing a product into the international "stream of commerce" with an awareness that the product could eventually end up in a given place as a result of the activities of other, unrelated entities is a sufficient basis, in the absence of any "substantial connection" with the forum, for personal jurisdiction under the United States Constitution.

The case arises from a product liability suit in Iowa federal court for severe personal injuries alleged to have been caused by a product manufactured by the petitioner, Synatel. Synatel is an English company with no presence whatsoever in the United States. Synatel's only connection with Iowa is that a small percentage of the M-700 products it manufactured and sold in England came to rest several transactions later in Iowa through the independent activities of a number of unrelated entities many times removed from Synatel. Some of the M-700s that Synatel manufactured were sold in England by Synatel to its customer Braime, which later resold some of them to yet another unrelated entity, 4B, which in turn, through yet another company, Keith's, sold some of the products in Iowa.

To appreciate fully the fortuitous and incidental nature of Synatel's contacts with the United States in general and Iowa in particular, it is essential to consider the jurisdictional facts presented to the District Court and Court of Appeals and constituting the basis for their rulings.

A. Jurisdictional Facts

Plaintiff Mark Vandelune was seriously injured in a grain dust explosion while working at the Consolidated Cooperative Grain Elevator ("Consolidated") in Gowrie, Iowa. Vandelune commenced this product liability suit against Synatel Instrumentation, Ltd. ("Synatel"), the British manufacturer of the M-700, and 4B Elevator Components, Ltd. ("4B"), also an English corporation but with no corporate connection whatsoever to Synatel and over which Synatel has absolutely no control.

4B has a branch office in Peoria, Illinois, but Synatel never sold any products, including the M-700, to 4B in England or in Illinois or indeed anywhere else in or outside the U.K. Instead, Synatel sold the M-700 in question to Braime Elevator Components, Ltd. ("Braime") of Leeds, England. Like 4B, Braime has no corporate connection whatsoever to Synatel, but rather is merely one of Synatel's many English customers.

The M-700 in question ended up at the Consolidated Cooperative in Gowrie, Iowa, through a series of transactions far beyond Synatel's control or direction: Synatel sold the M-700 to Braime in England; Braime sold the M-700 to 4B in Peoria, Illinois; 4B sold the M-700 to Keith's Complete Service ("Keith's") of Boone, Iowa; Keith's in turn sold the M-700 to Consolidated. Keith's installed the M-700 at Consolidated and at the direction of the Cooperative purposely did not connect the 20% shut-down feature on the product, thus duplicating the action of Consolidated's electrician who had intentionally left that feature unconnected on the M-700 that Keith's was replacing. Neither Consolidated nor Keith's is in any way connected to Synatel.[2]

2. When an elevator becomes clogged with grain, the conveyor belt may slip causing friction and heat, which can ignite grain dust. Federal Safety regulations require that most grain elevators be equipped with a motion sensor that will stop the conveyor belt when its speed is reduced by 20% of its normal operating speed. 29 C.F.R. § 1910.272(q)(5). The shut-down feature on the M-700 at issue was not connected at the time of the October 1994 explosion.

Synatel has no marketing or other presence in the United States. Synatel is an English corporation without any licenses, offices, maildrops, listings, agents, or advertising in the United States. Synatel's only connection to the forum is the fact that eighty-one of the M-700 units that it manufactured ended up in Iowa, via the general stream of commerce and through the independent activities of other entities. At approximately $100 per unit, these 81 M-700s comprise an infinitesimal part of Synatel's annual sales revenue, which exceeds $1,000,000. None of the M-700s that ended up in the United States was ever shipped or sold there by Synatel. Virtually all of Synatel's sales revenue is derived from products that never reach the United States. Synatel's name is not on any of the M-700s it manufactured and sold to Braime. Synatel has no distributors, sales representatives, or agents in the United States, nor does it control Braime or 4B, the entities that introduced the M-700 to the United States.

B. District Court Decision

Synatel moved for dismissal of the complaint under Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction. The District Court exercised diversity jurisdiction pursuant to 28 U.S.C. § 1332. The District Court granted Synatel's motion and found on the basis of the jurisdictional facts

> that the only indication of any contact by Synatel with the State of Iowa is evidence that Synatel placed its product, the M-700 Speed Switch Monitor, into the stream of commerce in the United States and the product ended up in the State of Iowa.

According to the District Court,

> the plaintiff presented no evidence from which this court can conclude that Synatel purposefully availed

> itself of the laws and protections of the State of Iowa such that it should reasonably expect to be haled into court here. . . . Synatel neither advertises nor otherwise solicits business in the State of Iowa and it did not create, control, or employ the distribution system that brought the M-700 speed switch into Iowa.

In dismissing the case against Synatel, the District Court relied upon Justice O'Connor's opinion in *Asahi Metal Industry Company, Ltd. v. The Superior Court of California*, 480 U.S. 102, 111, 122 (1987) (plurality opinion). There, Justice O'Connor opined that placing a product into the "stream of commerce" with awareness that it will eventually end up in a given place but absent an intent by the manufacturer to reap the benefits and protections of the forum is not a sufficient basis for personal jurisdiction:

> Rather, the "substantial connection" between the defendant and the forum state necessary for a finding of minimum contacts must come about by an action of the defendant purposely directed toward the forum state. *Id.* at 111.

Justice Stevens opined in the same case that the volume and character of the product at issue must be considered in making the constitutional determination:

> Whether or not [Asahi's] conduct rises to the level of purposeful availment requires a constitutional determination that is affected by the volume, the value, and the hazardous character of the components. *Id.* at 122.

C. Court of Appeals Decision

In its June 30, 1998 opinion, the Court of Appeals for the Eighth Circuit reversed the District Court and ruled that jurisdiction over Synatel in Iowa is constitutionally permissible. The Court of Appeals ignored both Justice O'Connor's and Justice Stevens's analyses in *Asahi* on the "stream of commerce" question, saying:

> The Supreme Court in *Asahi* split four to four on the broad question of whether introducing products into the "stream of commerce" satisfied the due process requirement of minimum contacts in a product liability case. Thus, this remains an open question.

Moreover, the Court of Appeals disregarded analogous post-*Asahi* cases from the Eighth Circuit itself upon which the District Court relied.[3] In reversing the District Court, it equated

3. *See Gould v. P.T. Karkatau Steel.*, 957 F.2d 573, 576 (8th Cir.), *cert. denied*, 506 U.S. 908 (1992), (holding that placement of product into the stream of commerce was not an act "purposely directed" toward the state of Arkansas where Indonesian corporation's contact with Arkansas consisted only of the "fortuitous" introduction of that corporation's products into Arkansas by third party); *Falkirk Mining Company v. Japan Steelworks, Ltd.*, 906 F.2d 369, 374 (8th Cir. 1990), (holding that foreign corporation's placement of products into the stream of commerce with knowledge that the products would end up in North Dakota, without more, could not support a finding that the foreign defendant purposely availed itself of the laws and protections of the state of North Dakota); and *Humble v. Toyota Motor Co., Ltd.*, 727 F.2d 709, 710 (8th Cir. 1984), (holding that Iowa court lacked personal jurisdiction over foreign corporation that had not advertised, solicited any business, or otherwise sought to serve any market in the United States because it could not reasonably have anticipated being haled into court in Iowa). In each of these cases, the manufacturer's contacts with the forum were far more substantial than Synatel's, but nonetheless jurisdiction was held unconstitutional.

Synatel's random, attenuated, fortuitous, and insignificant Iowa contacts with the substantial contacts of the foreign manufacturer in the Eighth Circuit's more recent opinion in *Barone v. Rich Brothers Interstate Display Fireworks Co.*, 25 F.3d 610 (8th Cir.), *cert denied*, 513 U.S. 948 (1994). In *Barone*, a foreign manufacturer of fireworks that "pour[ed] its products" into a regional distributor with the expectation that the distributor [would] penetrate a discrete multi-state trade area was deemed to have purposely reaped the benefits of the laws of each state in that trade area, and therefore subjected itself to the jurisdiction of those states' courts. 25 F.3d at 615.

The differences between the jurisdictional facts here and in *Barone* are significant. Unlike Synatel, which had no involvement in the ultimate destiny of the few thousand dollars worth of its products that ended up in the forum state, the manufacturer in *Barone*, Hosoya Fireworks Co., Ltd. ("Hosoya"), had significant contacts: Hosoya sold fireworks throughout the United States and elsewhere through nine distributors it utilized in six states; those nine American distributors annually purchased an average of $640,000 worth of fireworks over a six year period; that United States sales volume represented between 51 and 92 percent of Hosoya's fireworks business; and Hosoya would send the price lists, purchase terms, and shipping information to American distributors, as well as visit American distributors in the United States for the purpose of soliciting the purchase of Hosoya Fireworks. *Barone*, 25 F.3d 610. Clearly, Synatel's connection to the United States falls woefully short of the facts in *Barone* upon which the Eighth Circuit found jurisdiction over that foreign manufacturer.

The Eighth Circuit's disregard of the significant factual differences between the Synatel M-700 situation here and the jurisdictional facts in *Barone* as a basis for bypassing Justice

O'Connor's and Justice Stevens's "stream of commerce" analyses in *Asahi* was improper. The Eighth Circuit's decision to retain Synatel in this litigation by ignoring controlling Eighth Circuit precedent and what should be the "law of the land," namely a syntheses of Justice O'Connor's and Justice Stevens's "stream of commerce" opinions in *Asahi*, warrants certiorari.

The import of the Eighth Circuit's disregard of *Asahi* and its misapplication of *Barone* is self- evident. Having affirmed the dismissal of the only other remaining defendant (4B) on different grounds, the Eighth Circuit improperly overreached to keep Synatel in the case, perhaps in sympathy for an injured plaintiff but in contravention of Synatel's constitutional rights.[4]

REASONS FOR GRANTING THE WRIT

I.

THE PETITION SHOULD BE GRANTED BECAUSE THE UNITED STATES CIRCUIT COURTS ARE SPLIT ON THE SAME IMPORTANT QUESTION OF FEDERAL LAW THAT SHOULD BE SETTLED BY THIS COURT.

Synatel's petition for a writ of certiorari should be granted because the Eighth Circuit's opinion conflicts with the decision of other United States Court of Appeals rulings that interpret this Court's prior plurality opinion in *Asahi* on the important

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4. In its remarkable effort to preserve plaintiff's chances for recovery from Synatel, the Eighth Circuit disregarded the simple fact that plaintiffs can still seek recovery from the parties who are truly culpable if plaintiffs' allegations have merit and over whom the District Court has jurisdiction, namely Braime (which targeted the product to the United States), Keith's (which negligently installed the product), and Consolidated (which was grossly negligent by directing the improper installation of the device).

and recurring international commerce question of personal jurisdiction over foreign manufacturers whose products reach the forum through the acts of others via the international "stream of commerce."

Justice O'Connor, writing for a plurality in *Asahi*, undertook to resolve a split in the circuits on what constitutes purposeful availment in the "stream of commerce" product liability cases. *See Id.* at 105-16. According to Justice O'Connor's opinion in *Asahi* (joined by Chief Justice Rehnquist and Justices Scalia and Powell), a manufacturer's placement of a product into the stream of commerce, even if done with awareness that the product may end up in the forum state, is not of itself sufficient to warrant personal jurisdiction absent a "substantial connection" between the manufacturer and the forum established by additional conduct indicating an intent to serve the forum state.

Four *Asahi* Justices (Justice Brennan, joined by Justices White, Marshall, and Blackmun) opined that such activity by a manufacturer would warrant personal jurisdiction in the forum state, and three justices (opinion by Justice Stevens, joined by Justices White and Blackmun) indicated that, although it was unnecessary to reach the question, they believed that the quantum of Asahi's course of dealing in the forum constituted "purposeful availment." *Id.* at 122. In his opinion, Justice Stevens rejected the plurality's assumption that an unwavering line could be placed between mere awareness that a product would reach the forum and purposeful availment of that market. *Id.* He stated that:

> [w]hether or not [Asahi's] conduct rises to the level of purposeful availment requires a constitutional determination that is affected by the volume, the

> value, and the hazardous character of the components.

Id.

Justice Stevens went on to say:

> In most circumstances, I would be inclined to conclude that a regular course of dealing that results in deliveries of over 100,000 units annually over a period of several years would constitute "purposeful availment" even though the item delivered to the forum state was a standard product marketed throughout the world. *Id.*

Thus, even a degree of connection far more extensive than Synatel's could only elicit from Justice Stevens a less than enthusiastic inclination "in most circumstances."

Different circuit courts have seized upon different portions of the *Asahi* plurality opinion in interpreting this "stream of commerce" jurisdictional question. As a result, the circuits are now split on how to interpret *Asahi*. *See, e.g.*, *Renner v. Lanard Toys, Ltd.*, 33 F.3d 277, 281-83 (3d Cir. 1994) (discussing *Asahi* and its reception by the lower courts at length and acknowledging the need for the Supreme Court to flesh out the differences between Justice O'Connor's and Justice Stevens's views); *Boit v. Gar-Tec Prods., Inc.*, 967 F.2d 671, 683 (1st Cir. 1992) (citing cases from the First, Eighth, and Eleventh Circuits adopting Justice O'Connor's preferred view); *Dehmlow v. Austin Fireworks*, 963 F.2d 941, 947 (7th Cir. 1992) (holding that jurisdiction existed under Justice Brennan's more expansive view, but stating that facts also warranted jurisdiction under Justice O'Connor's more stringent view; accord *Irving v. Owens-Corning Fiberglas Corp.*, 864 F.2d 383, 385-86 (5th Cir. 1989).

Because this Court's last opinion on this important question, in *Asahi*, resulted in a four-to-four split on the jurisdictional "stream of commerce" question, there is no clear "law of the land" on the issue. This case presents the Court with the opportunity to synthesize the *Asahi* opinions, resolve the dispute among the Circuit Courts, and offer comprehensive guidance for the future.

II.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW IS IN CONFLICT WITH THE DECISION OF A MAJORITY OF JUSTICES IN *ASAHI* CONCERNING THE JURISDICTIONAL STREAM OF COMMERCE QUESTION.

Given Synatel's almost non-existent dealings with the forum state and that only a few thousand dollars worth of its products actually reached Iowa, it seems self-evident that Synatel's activities would not be enough to warrant jurisdiction under either Justice O'Connor's or Justice Stevens's suggested analysis. Here, there is simply no "substantial connection" between Synatel and the forum, nor does the "volume, value, or hazardous character" of the product warrant jurisdiction. Nonetheless, in its opinion below the Eighth Circuit implicitly adopted Justice Brennan's view from *Asahi* while rejecting the views of a majority of Justices as articulated by Justices Stevens and O'Connor. Hence, the need for this Court to settle the "stream of commerce" jurisdictional question.

Synatel accordingly respectfully requests that the Supreme Court remedy the Eighth Circuit's disregard for the opinions of the majority of the *Asahi* Justices by granting certiorari here.

III.

IOWA JURISDICTION OVER SYNATEL WOULD BE UNCONSTITUTIONAL BECAUSE IT WOULD SUBJECT SYNATEL TO THE UNFAIR, UNIQUE, AND SIGNIFICANT BURDENS OF DEFENDING ITSELF IN A FOREIGN LEGAL SYSTEM.

Even if the plaintiffs could show sufficient Iowa contacts (which they cannot), the severe burden to Synatel of defending this suit in Iowa (and consequently being forced to litigate an inevitable third-party dispute in the United States between it and its English customer Braime) precludes jurisdiction here. The Eighth Circuit completely ignored this constitutional requirement (and its own law)[5] in holding that jurisdiction over Synatel was proper.

As this Court recognized in *Asahi*, in determining the reasonableness of the exercise of jurisdiction a court must consider the burden on the defendant and "it must also weigh in its determination the interstate judicial system's interest in obtaining the most efficient resolution of controversies. . . ." *Asahi* 107 S. Ct. 1026, 1033, *citing Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). The Supreme Court called for consideration of the "procedural and substantive policies of other nations whose interests are affected by the assertion of jurisdiction." *See Asahi* 480 U.S. 102, 115

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5. The Eighth Circuit disregarded its analogous opinion in *Hutson v. Fehr Bros.*, 584 F.2d 833 (8th Cir. 1978), where the court noted that an Italian defendant in a United States action would be substantially burdened by having to defend in the United States and "strongly tempted to settle even if it believes it is not liable, because of the tremendous expense of trying the lawsuit, an expense that bears far more heavily on it than on the other parties." It would be constitutionally repugnant to coerce Synatel into the same position here.

("Great care and reserve should be exercised when extending our notions of personal jurisdiction in the international field." *Id.*)

Here, the severe and unique burdens to Synatel of being forced into the Iowa court are similar to those faced by the Japanese defendant in *Asahi*, which were among the factors relied upon by the Court in ruling against jurisdiction.

As in *Asahi*, jurisdiction over Synatel here would not only force Synatel to:

> traverse the distance between [its headquarters in England] and [the Iowa court], but also to submit its dispute with [Braime, via the third-party action that will certainly ensue][6] to a foreign nation's judicial system.

480 U.S. 102, 114. Also as in *Asahi*, it may very well be improper here for Iowa law to govern the question of whether one English corporation should indemnify another on the basis of a sale and shipment that took place in England. *Id.* at 114.

Synatel is a very small company with fewer than twenty employees. Obviously, Synatel's defense of this suit through trial would have a crippling effect on the business. Synatel would be forced to continue using United States counsel to defend the suit and to deal with the logistical complexities involved in managing a litigation with an English client (and referring counsel) and United States attorneys. The severe inconvenience and disadvantage to Synatel are self-evident.

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6. If Synatel is required to defend in Iowa it will obviously be forced to bring an indemnification claim against its English customer, Braime.

The plaintiffs have several alternative targets from which they can seek recovery.[7] They could sue Braime, the company that sold the unit into the state; in fact, if plaintiffs were determined to sue a United Kingdom entity, why they chose Synatel and not Braime has always been perplexing. The contractor who installed the defective product, Keith's, could also be sued for its obvious negligence in installing the M700 without connecting the 20% shut down feature. Finally, the plaintiffs could also seek relief from Mr. Vandelune's employer for its gross negligence in directing that the M700 be installed without the 20% shut down feature. In brief, plaintiffs do not need Synatel to have their day in court and obtain whatever recovery they may be entitled to.

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7. The Iowa statute of limitations applicable to injuries arising from products is fifteen years from the date of installation of the product.

CONCLUSION

This case presents a question of extreme importance in the international commerce arena. If the Eighth Circuit's opinion is allowed to stand, Synatel will have been denied due process and forced to suffer the consequences of defending a suit in which it is not culpable, jurisdiction is improper, and an enormous, unfair burden is imposed on Synatel. By granting Synatel's petition for certiorari, this Court can correct the Eighth Circuit's disregard for its own law and this Court's ruling in *Asahi*, and provide guidance to the Circuit Courts so that in the future they can adjudicate uniformly the multitude of similar suits that will inevitably continue to arise in this era of a global economy.

Accordingly, Synatel respectfully requests that its petition for a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT FILED JUNE 30, 1998

United States Court of Appeals
for the eighth circuit

No. 97-2510

Mark Vandelune and Julie Vandelune, individually and as parents of Chelsea Vandelune and Tasia Vandelune,

Plaintiffs - Appellants,

v.

4B Elevator Components Unlimited; Synatel Instrumental Ltd.,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Iowa.

Submitted: January 16, 1998
Filed: June 30, 1998

Before LOKEN and MURPHY, Circuit Judges, and WEBBER,[1] District Judge.

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1. The HONORABLE E. RICHARD WEBBER, United States District Judge for the Eastern District of Missouri, sitting by designation.

Appendix A

LOKEN, Circuit Judge.

Plaintiff Mark Vandelune was seriously injured in a grain dust explosion while working at the Consolidated Cooperative Grain Elevator ("Consolidated") in Gowrie, Iowa. Contending that a faulty M700 Speedswitch Monitor proximately caused the explosion and injury, Vandelune commenced this product liability suit against Synatel Instrumentation Ltd. ("Synatel"), the British manufacturer of the M700, and 4B Elevator Components Ltd. ("4B"), its independent distributor. Vandelune's wife and two children also sued, claiming loss of consortium. The district court granted 4B's motion for summary judgment, denied the Vandelunes' motion to amend their complaint against 4B, and dismissed Synatel for lack of personal jurisdiction. The Vandelunes appeal. We affirm as to 4B but reverse and remand as to Synatel.

I. Defendant 4B

When an elevator leg becomes plugged with grain, the conveyor belt may slip causing friction and heat, which can ignite grain dust. Federal safety regulations require that most grain elevators be equipped with a motion sensor that will stop the conveyer belt when its speed is reduced by twenty percent of its normal operating speed. See 29 C.F.R. § 1910.272(q)(5). The M700 is one such device manufactured by Synatel of Staffordshire, England. Consolidated's elevator at Gowrie was equipped with the M700 at the time of the October 1994 explosion.

Synatel sold the M700 in question to Braime Elevator Components, Ltd., of Leeds, England. Braime sold the M700

to 4B, a Braime affiliate located in Peoria, Illinois. In early 1994, 4B sold the M700 to Keith's Complete Service ("Keith's") of Boone, Iowa. Keith's sold the M700 to Consolidated to replace an M700 installed in 1992 by a local electrician. Keith's owner, Keith Pfrimmer, who is not an electrician, installed the replacement M700 in the Gowrie elevator's west leg, wiring the new M700 in the same manner as the one it replaced.

The M700 was designed with two safety features that a customer may — but need not — connect at installation. The first is a warning light or siren intended to be triggered when conveyor belt speed is reduced by ten percent of normal operating speed. The second automatically stops the conveyer belt when its speed falls to twenty percent below normal operating speed. Pfrimmer did not connect the twenty percent shutdown feature because Consolidated's electrician had left that feature unconnected on the M700 Pfrimmer was replacing. The Vandelunes' expert tested the M700 after the explosion and determined that its ten percent warning device malfunctioned, in that it was not triggered until the conveyor belt speed was reduced by more than twenty percent. The Vandelunes assert claims against 4B (and Synatel) for negligent failure to warn that the twenty percent safety feature should be connected and for negligent manufacture and testing of the malfunctioning M700.

The district court granted summary judgment dismissing these claims against 4B. On appeal, we review the grant of summary judgment de novo, examining the evidence in the light most favorable to the nonmoving party, in this case the Vandelunes. See Fed. R. Civ. P. 56(e); Bituminous Cas. Corp. v. Tonka Corp., 9 F.3d 51, 52 (8th Cir. 1993), cert. denied, 511

U.S. 1083 (1994). To establish a claim of negligence, the Vandelunes must prove that 4B owed a duty to conform to a given standard of conduct, that 4B's breach of that standard was a proximate cause of Mark Vandelune's injury, and damages. See Gremmels v. Tandy Corp., 120 F.3d 103, 105 (8th Cir. 1997).

Failure To Warn. The M700 instructions told users and installers how to connect the ten percent safety alarm and the twenty percent shutdown features. Relying upon the deposition testimony of their expert, the Vandelunes argue that 4B was negligent in failing to specifically warn grain elevator customers that OSHA regulations require them to connect the M700's twenty percent shutdown feature. The district court rejected this claim for two independent reasons: because there is no evidence that 4B should have known that grain elevator users would not connect the twenty percent safety feature, and because any failure to warn was not a proximate cause of the explosion since Pfrimmer knew of the OSHA requirement and did not look at the M700 instructions when installing the replacement at Consolidated's elevator.

The Supreme Court of Iowa has adopted § 388 of the Restatement (Second) of Torts to determine whether a manufacturer or supplier has satisfied its duty to warn of a product's dangerous propensities. "[T]he duty to warn is based upon superior knowledge of the manufacturer or supplier as to the dangers a certain product poses." Lamb v. Manitowoc Co., 570 N.W.2d 65, 68 (Iowa 1997); see Nichols v. Westfield Indus., Ltd., 380 N.W.2d 392, 401 (Iowa 1985). "[T]here is no duty to warn if the user knows or should know of the potential danger, especially when the user is a professional who should be aware of the characteristics of the product." Strong v E.I.

DuPont de Nemours Co., 667 F.2d 682, 687 (8th Cir. 1981) (applying Restatement § 388 under Nebraska law). Here, OSHA regulations imposed a duty on Consolidated, the purchaser of the M700, to install a motion sensor device with a twenty percent shutdown feature. Though 4B sold equipment to grain elevators and doubtless knew of the risks of grain dust explosions, it did not have greater knowledge of such risks than its ultimate customers. Moreover, the M700 did not create an explosion risk; it was designed to alleviate a risk the customer itself creates. In these circumstances, we agree with the district court that 4B had no duty to warn.

Alternatively, even if 4B owed a duty to warn, we agree with the district court that any breach of that duty was not a proximate cause of Mark Vandelune's injuries. Pfrimmer testified he was aware of the OSHA regulation requiring a twenty percent shutdown feature but nevertheless did not connect that feature on the new M700 because he simply duplicated the wiring of the M700 being replaced. The record does not reflect why Consolidated instructed its electrician not to connect the shutdown feature on the first M700, thereby violating the OSHA regulation. Moreover, Pfrimmer did not even consult the M700 instructions and warnings in performing his work. Thus, 4B's lack of an explicit warning was not a proximate cause of the explosion.

Negligent Manufacture and Testing. The Vandelunes contend that the M700 was negligently manufactured, tested, and inspected because the ten percent safety feature malfunctioned when tested by their expert after the explosion. The Vandelunes acknowledge that 4B received the M700 in a sealed box and did not open the box before reshipping the product ten days later. But they argue 4B is liable for this

negligence because the M700 was designed and manufactured "in joint cooperation" between Synatel, Braime, and 4B. The district court dismissed these claims because there is no evidence 4B negligently designed or manufactured the M700 and no evidence 4B had reason to believe the M700 was not reasonably safe for its intended use. We agree. Whatever the involvement of Braime in inducing Synatel to design the M700 for the United States market, there is no evidence 4B participated in the design and manufacture of that product in England. Therefore, 4B as reseller cannot be liable for negligent manufacture. See Nichols, 380 N.W.2d at 397. Likewise, 4B cannot be liable for negligent failure to inspect or test because there is no evidence it knew or had reason to know that the M700 "is, or is likely to be, dangerous." Spaur v. Owens-Corning Fiberglas Corp., 510 N.W.2d 854, 864 (Iowa 1994), quoting Restatement (Second) of Torts § 402.

Denial of Motion To Amend. After the district court dismissed Synatel for lack of personal jurisdiction, the Vandelunes moved to amend their complaint to add claims against 4B for strict liability and breach of the implied warranty of merchantability. The district court denied this motion as futile under Iowa Code Ann. § 613.18(1)(a), a 1986 statute granting resellers who did not design or manufacture a product immunity from such claims arising "solely from an alleged defect in the original design or manufacture of the product." On appeal, the Vandelunes argue that the district court abused its discretion in denying their motion to amend, relying on prior Iowa case law without discussing § 613.18(1)(a). We conclude the district court properly applied this new statute. See Bingham v. Marshall & Huschart Mach. Co., 485 N.W.2d 78, 79-80 (Iowa 1992). Thus, there was no abuse of discretion in denying the motion to amend.

Appendix A

The district court properly granted summary judgment dismissing the claims of Mark Vandelune against 4B. Therefore, the derivative claims of his wife and children against 4B also fail. See St. John v. International Ass'n of Machinists, 139 F.3d 1214, 1217 n.1 (8th Cir. 1998).

II. Defendant Synatel

Synatel moved to dismiss for lack of personal jurisdiction. See Fed. R. Civ. P. 12(b)(2). The district court concluded that Synatel was properly served under Iowa's long-arm statute, Iowa Code Ann. § 617.3, and Synatel does not challenge that ruling. The question then is whether exercise of personal jurisdiction comports with due process, a question that turns on whether Synatel had the requisite minimum contacts with the forum State of Iowa. This requirement is satisfied "if the defendant has 'purposefully directed' his activities at residents of the forum, and the litigation results from alleged injuries that 'arise out of or relate to' those activities." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985) (citations omitted).

The due process issue in this case is a recurring one — when may an out-of-state or foreign manufacturer be required to defend product liability claims in the forum State of the injured plaintiff. The district court concluded that exercise of personal jurisdiction over Synatel would not comport with due process because "the only indication of any contact by Synatel with the state of Iowa is evidence that Synatel placed its product, the M700 Speedswitch Monitor, into the stream of commerce in the United States and the product ended up in the state of Iowa." In concluding this is not action "purposefully directed toward the forum state," the court relied upon the lead opinion

in Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 112 (1987). But the court erred in overlooking our recent opinion in Barone v. Rich Bros. Interstate Display Fireworks Co., 25 F.3d 610 (8th Cir.), cert. denied sub nom. Hosoya Fireworks Co. v. Barone, 513 U.S. 948 (1994).

We explained in Barone that the Supreme Court in Asahi split four-to-four on the broad question whether introducing products into the "stream of commerce" satisfies the due process requirement of minimum contacts in a product liability case. Thus, this remains an open question. Moving to a more fact intensive analysis, we acknowledged in Barone that a manufacturer whose product ends up in the forum State on an "attenuated, random, or fortuitous" basis has not purposefully directed its activities at residents of that State. That is the teaching of Burger King, 471 U.S. at 475, and World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 296-97 (1980). It was the fact pattern in our post-Asahi cases on which the district court relied, Gould v. P.T. Krakatau Steel, 957 F.2d 573, 576 (8th Cir.), cert. denied, 506 U.S. 908 (1992), and Falkirk Min. Co. v. Japan Steel Works, Ltd., 906 F.2d 369, 375 (8th Cir. 1990). But we distinguished those cases in Barone, concluding that, when a foreign manufacturer "pour[s] its products" into a regional distributor with the expectation that the distributor will penetrate a discrete, multi-State trade area, the manufacturer has "purposefully reaped the benefits" of the laws of each State in that trade area for due process purposes. 25 F.3d at 615.

Barone controls the personal jurisdiction issue raised by this appeal. It is true that Synatel is a foreign corporation having no office, agents, employees, or property in the State of Iowa, and that Synatel neither advertises nor directly solicits business

in Iowa. Those are facts supporting its motion to dismiss for lack of personal jurisdiction. But, as Barone illustrates, the absence of this kind of direct marketing presence does not necessarily mean that Synatel has not purposefully marketed the M700 in Iowa. The discovery record reflects that, at the urging of Braime, Synatel designed the M700 for United States markets, particularly the substantial grain elevator market. Synatel agreed to distribute the M700 through a Braime affiliate, 4B. Synatel put its distinctive "Owl" logo and an identifying 4B decal on each M700. Synatel shipped some M700s directly to 4B at the request of Braime, and Synatel employees attended technical support meetings at 4B's facilities in Peoria, Illinois, which is about eighty miles from the Iowa border. Between October 1, 1993, and September 30, 1994, Synatel sold 619 M700s to 4B, 81 of which were resold into Iowa. These are not "attenuated, random, or fortuitous" contacts with the forum State.

When the district court has resolved an issue of personal jurisdiction without a trial or evidentiary hearing, as in this case, we review de novo whether plaintiffs have made a prima facie showing of personal jurisdiction, viewing the facts in the light most favorable to them. See Dakota Indus., Inc. v. Dakota Sportswear, Inc., 946 F.2d 1384, 1387 (8th Cir. 1991). We conclude that the Vandelunes have made such a showing in this case, and therefore Synatel's motion to dismiss for lack of personal jurisdiction should have been denied.

The judgment of the district court in favor of defendant 4B Elevator Components Unlimited is affirmed. The judgment in favor of Synatel Instrumental Ltd., is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

Appendix A

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA, CENTRAL DIVISION FILED MARCH 13, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

No. C 95-3Q87

MARK VANDELUNE, JULIE VANDELUNE, individually and as parents of Chelsea VandeLune and Tasia Vandelune,

Plaintiffs,

vs.

4B ELEVATOR COMPONENTS LIMITED, et al.

Defendants.

ORDER

This matter comes before the court pursuant to defendant Synatel Instrumentation, Ltd.'s November 22, 1996 motion to dismiss (docket number 26). Defendant Synatel Instrumentation, Ltd., contends that the court lacks personal jurisdiction over it because plaintiffs have not shown compliance with Iowa's long-arm statute and because it does not have the requisite minimum contacts with the forum state. The parties have consented to the exercise of jurisdiction by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). For the reasons set forth below, the court grants the defendant's motion.

Appendix B

Statement of the Case

Plaintiffs' complaint alleges a cause of action based upon strict liability, breach of implied warranty, negligence, *res ipsa loquitur*, and breach of express warranty against defendants Synatel Instrumentation, Ltd. (Synatel) and 4B Elevator Components, Ltd., (4B), for injuries resulting from the explosion of a grain elevator at Mark VandeLune's place of employment, Consolidated Cooperative, Inc. in Gowrie, Iowa. The explosion was allegedly caused by a faulty speed monitor manufactured by Synatel and sold by defendant 4B to a contractor who, in turn, sold the product to Mark VandeLune's employer and installed it in his workpalce.

Plaintiffs are residents of Iowa. Defendant Synatel is an English corporation organized and operating under the laws of England. Synatel does not have any offices in the United States. Defendant 4B is also an English corporation, incorporated under the laws of England with its executive offices located in England and with a branch office located in East Peoria, Illinois.

Conclusions of Law

Defendant Synatel moves for the dismissal of plaintiffs' complaint pursuant to *Fed. R. Civ. P.* 12(b)(2). In support of this motion, Synatel asserts that this court cannot exercise *in personam* jurisdiction over it because it has not entered into any contract or committed any tort that would confer jurisdiction over it under Iowa's long-arm statute, *Iowa Code* § 617.3 (1995). Further, Synatel contends that even if the requirements of the long-arm statute are met, exercise of jurisdiction over Synatel would violate the Due Process Clause of the United States constitution because Synatel does not have sufficient contacts with the state of Iowa.

Appendix B

The court exercises diversity jurisdiction in this matter pursuant to 28 U.S.C. § 1332. Plaintiffs served Synatel pursuant to Section 617.3 of the *Iowa Code*, Iowa's long-arm statute. The inquiry into whether a federal court may exercise personal jurisdiction over a nonresident party is twofold. *Barone v. Rich Brothers Interstate Display Fireworks Co.*, 25 F.3d 610, 611 (8th Cir. 1994); *Wines v. Lake Havasu Boat Mfg., Inc.*, 846 F.2d 40, 42 (8th Cir. 1988) (*per curiam*). A court first must determine whether the facts presented satisfy the forum state's long-arm statute and then decide whether the court's exercise of jurisdiction would be fair and in accordance with due process *Id.*

In resisting a motion to dismiss for lack of personal jurisdiction, the nonmoving party must make a *prima facie* showing of jurisdiction. *Dakota Indus., Inc. v. Ever Best, Ltd.*, 28 F.3d 910, 914 (8th Cir. 1994)(quoting *Bell Paper Box, Inc. v. U.S. Kids, Inc.*, 22 F.3d 816, 818 (8th Cir. 1994)). This burden may not be shifted to the party challenging jurisdiction. *Newhard, Cook & Co. v. Inspired Life Centers, Inc.*, 895 F.2d 1226, 1228 (8th Cir. 1990) (citing *Mountaire Feeds, Inc. v. Agro Impex, S.A.*, 677 F.2d 651, 653 n.3 (8th Cir. 1982). In making the jurisdictional determination based on written submissions, a court must view the facts in the light most favorable to the nonmoving party. *Id.*

It is undisputed that plaintiffs served Synatel pursuant to Section 617.3 of the Iowa Code, Iowa's long-arm statute. *Iowa Code* § 617.3 states:

> If a foreign corporation . . . commits a tort in whole or in part against a resident of Iowa, such acts shall be deemed to be doing business in Iowa by such

> foreign corporation for the purpose of service of process or original notice on such foreign corporation under this section . . . .

The law of the State of Iowa controls the question of whether the state long-arm statute applies in this case. *Caesar's World., Inc. v. Spencer Foods, Inc.*, 498 F.2d 1176, 1179 (8th Cir. 1974). The Iowa Supreme Court construes Iowa's long-arm statute narrowly and has noted that the statute was not intended to go "to the full extent of constitutional authority." *Health Care Equalization Comm. of Iowa Chiropractic Soc'y v. Iowa Med. Soc'y*, 501 F. Supp. 970, 984 (S.D. Iowa), *aff'd*, 851 F.2d 1020 (8th Cir. 1988)(quoting *Gravelie v. TBS Pacific, Inc.*, 256 N.W.2d 230, 232 (Iowa 1977)).

Plaintiffs contend that Synatel committed a tort in whole or in part in Iowa because Mark VandeLune was injured by the explosion of a grain elevator which was allegedly caused by a speed monitor manufactured by Synatel. The Iowa Supreme Court held that if an injury from a defective product arises in Iowa, then the alleged tort giving rise to the injury is committed in Iowa within the meaning of section 617.3 of the *Iowa Code*, even if the product was originally manufactured in another state. *Schinker v. Ruud Mfg. Co.*, 386 F. Supp. 626 (N.D. Iowa 1974) (citing *Anderson v. National Presto Indus., Inc.*, 257 Iowa 911, 135 N.W.2d 639 (1965)); *see also Barrett v. Bryant*, N.W.2d 917, 920 (Iowa 1980). Accordingly, the court finds that plaintiffs have satisfied the requirements of Iowa's long-arm statute.

The due process clause permits a district court to exercise personal jurisdiction over a nonresident defendant when:

(1) they have sufficient minimum contacts with the forum; and

(2) the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.

International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) *See Bell Paper Box, Inc. v. U.S. Kids, Inc.*, 22 F.3d 816, 818 (8th Cir. 1994) ("Sufficient contacts exist when the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there, and when maintenance of the suit does not offend traditional notions of fair play and substantial justice."). To establish minimum contacts with the forum state, "there must be 'some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.'" *Soo Line R.R.. Co. v. Hawker Siddeley Canada, Inc.*, 950 F.2d 526, 529 (8th Cir. 1991) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)); *see Hanson v. Denckla*, 357 U.S. 235, 253 (1958). The district court exercises specific jurisdiction over actions related to the defendant's purposeful conduct rather than the plaintiff's unilateral activities. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

Synatel claims that the exercise of personal jurisdiction by this court would not comport with the requirements of the due process clause because it does not have sufficient minimum contacts with Iowa. Synatel asserts that it has never had direct contact with Iowa — it has never had a presence in Iowa, has never sold products here, advertised here, or otherwise solicited business in the state. Synatel contends that its M700

Appendix B

Speedswitch Monitor reached Iowa through the independent activities of defendant 4B and the contractor to whom 4B sold the monitor who eventually installed it in a grain elevator in VandeLune's workplace.

Plaintiffs maintain that Synatel has sufficient minimum contacts with Iowa to allow for personal jurisdiction in this case. Plaintiffs admit that Synatel manufactured the M700 Speedswitch specifically for Braime Elevator Components pursuant to Braime's order and that the Synatel name was not put on the product. Braime, in turn, sold the M700's to 4B in East Peoria, Illinois. Plaintiffs maintain, however, that the speed monitor was developed and marketed jointly by Synatel and 4B\Braime. In support of this contention, plaintiffs present evidence that Adrian Morris, a sales and marketing director for Synatel, met three to four times with 4B's employees at the company's offices in East Peoria, Illinois. Personnel from 4B also visited Synatel's manufacturing plant in the United Kingdom on occasion. Plaintiffs also assert that Synatel prepared the text for the M700 Instruction Manual, that Synatel was in charge of submitting the M700 for Factory Mutual Research testing to get the product approved for sale in the United States, and that the M700 was an "Americanized" version of a Synatel product called the Rotamatic which Synatel manufactured for the Europe an market. Finally, plaintiff asserts that Synatel-manufactured devices had a significant impact upon the market in Iowa.

Synatel manufactured between 1000 and 1200 of the M700 devices per year in the years 1993 and 1994. Of the total number manufactured in 1994, 50 to 60 percent wound up at 4B Elevator Components in East Peoria, Illinois. Plaintiffs contend that, of the 619 Synatel M700 devices that wound up at 4B in Illinois,

61 were sold by 4B for installation in Iowa. An additional 24 Synatel devices were sold in Iowa through Rolfes Company, another Midwest company that received shipments of M700's from Braime. Plaintiffs argue that, although Synatel manufactured the M700s for Braime Elevator Components in England and sold the M700's to Braime in England, Synatel had knowledge that its product would end up at 4B Elevator Components in East Peoria, Illinois and would be distributed throughout the Midwest. In fact, plaintiffs assert that Synatel helped to market its product in the United States. Thus, plaintiffs argue that Synatel had fair warning that it would be held to answer for the failure of its product in Iowa.

The court finds that the only indication of any contact by Synatel with the state of Iowa is evidence that Synatel placed its product, the M700 Speedswitch Monitor, into the stream of commerce in the United States and the product ended up in the state of Iowa. The issue, then, becomes whether this contact is sufficient to satisfy the due process requirement of minimum contacts with the state of Iowa. Plaintiffs maintain that this contact is sufficient to warrant personal jurisdiction over Synatel. In *Asahi Metal Industry Company, Ltd. v. Superior Court of California*, 480 U.S. 102, 111 (1987) (plurality opinion), the Supreme Court held that placing a product into the "stream of commerce" with an awareness that it will eventually end up in a given place is not a sufficient basis for personal jurisdiction. Rather, the " 'substantial connection' between the defendant and the forum State necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum state." *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)) (citing *Keeton v. Hustler Macrazine, Inc.*, 465 U.S. 770, 774 (1984)). The Eighth Circuit Court of Appeals shares

this view. *See Gould v. P.T. Krakatau Steel*, 957 F.2d 573, 576 (8th Cir.), *cert. denied*, 506 U.S. 908 (1992)(holding that placement of product into the stream of commerce was not an act "purposely directed" toward the state of Arkansas where Indonesian corporation's contact with Arkansas consisted only of the "fortuitous" introduction of that corporation's products into Arkansas by third party); *Falkirk Mining Company v. Japan Steelworks, Ltd.*, 906 F.2d 369, 374 (8th Cir. 1990) (holding that foreign corporation's placement of products into the stream of commerce with knowledge that the products would end up in North Dakota, without more, could not support a finding that a foreign defendant purposely availed itself of the laws and protections of the state of North Dakota); *Humble v. Toyota Motor Co., Ltd.*, 727 F.2d 709, 710 (8th Cir. 1984) (holding that Iowa court's lacked personal jurisdiction over foreign corporation that had not advertised, solicited any business or otherwise sought to serve any market in the United States because it could not reasonably have anticipated being haled into court in Iowa).

The plaintiff has presented no evidence from which this court could conclude that Synatel purposefully availed itself of the laws and protections of the State of Iowa such that it should reasonably expect to be haled into court here. Synatel has no office, agents, employees or property in the state. Synatel neither advertises nor otherwise solicits business in the State of Iowa and it did not create, control, or employ the distribution system that brought the M700 Speedswitch into Iowa. The fact that Synatel met with employees of defendant 4B in East Peoria, Illinois for technical and commercial discussions, manufactured the M700 Speedswitch Monitor according to the specifications of the United States market, and knew that its product would be sold in the United States, and possibly in the Midwest, does

not provide sufficient contact with the state of Iowa to warrant personal jurisdiction over Synatel. The Eighth Circuit Court of Appeals has made it clear that a defendant's contacts with the forum state must be more than just "random, fortuitous, or attenuated." *Dakota Indus., Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384, 1389 (8th Cir. 1991) (citations and internal quotations omitted). Because the court concludes that any contact by Synatel with the state of Iowa is in fact "random, fortuitous, or attenuated," the court concludes that it does not have personal jurisdiction over defendant Synatel and thus grants Synatel's motion to dismiss pursuant to *Fed. R. Civ. P.* 12(b)(2)

Upon the foregoing,

IT IS ORDERED

Defendant Synatel Instrumentation, Ltd.'s motion to dismiss pursuant to *Fed. R. Civ. P.* 1.2(b)(2) is granted.

March 13, 1997.

s/ John A. Garvey
JOHN A. GARVEY
Magistrate Judge
UNITED STATES DISTRICT COURT

(2)

No. 98-518

FILED
OCT 27 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

October Term, 1998

SYNATEL INSTRUMENTATION LTD.,

Petitioner,

vs.

MARK VANDELUNE and JULIE VANDELUNE, Individually and as Parents of CHELSEA VANDELUNE and TASIA VANDELUNE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

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QUESTIONS PRESENTED FOR REVIEW

Was the Eighth Circuit Court correct in holding that a foreign manufacturer may be sued in states where the manufacturer has purposefully aimed its product for distribution?

Did Plaintiffs make a prima facie case for jurisdiction?

Does Synatel have a potential claim for indemnity against the British distributor of the product?

LIST OF PARTIES

Plaintiffs are individual residents of Iowa. Mark VandeLune was injured in a grain elevator explosion and fire in Iowa on October 20, 1994. He is joined in the suit by his wife Julie and their daughters Chelsea and Tasia, who sue for loss of spousal and parental consortium.

Defendant Synatel Instrumentation Ltd. is a British corporation. Plaintiffs accept Synatel's statement in the Petition that Synatel has no parent nor wholly owned subsidiaries.

A former co-Defendant 4B Elevator Components, Ltd., was a party until the Eighth Circuit Court's ruling filed June 30, 1998. That ruling affirmed the dismissal of 4B on motion for summary judgment below. 4B is not involved in this Petition.

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STATEMENT OF THE CASE

The narrow question presented by the Petition is whether the facts of this case constitute a prima facie case that the Defendant manufacturer distributed its product with knowledge that its product could end up in Iowa.

This product liability suit arose from a grain elevator dust explosion October 20, 1994, in Gowrie, Iowa. The suit is against the manufacturer of an alarm device designed to prevent grain elevator dust explosions. The particular device in question is called the M700 Speed-switch Monitor. A similar device was manufactured under the name Rotamatic by Defendant Synatel for distribution in Europe and countries other than the United States. In 1993 Synatel and 4B Elevator Components, Ltd. of Peoria, Illinois, agreed to modify the Rotamatic and distribute it within the American market as the M700. The M700 was designed to detect reduction in speed of rapidly spinning machines, such as grain elevator motors. Modifications made expressly for the American market included modifications needed to comply with United States O.H.S.A. regulations. Product development by Synatel included submission of the M700 to America's Factory Mutual Research testing laboratory in Massachusetts.

The M700 was manufactured by Synatel. It was modified from the Rotamatic by Synatel with the cooperation of 4B. Representatives of 4B traveled to Great Britain during the design phase of the M700, and representatives of Synatel traveled to Peoria to meet with 4B personnel. Manufacturing specifications were exchanged by fax. 4B is a wholly owned subsidiary of Braime Pressings, Ltd. of

Great Britain. Synatel knew the product was sold to 4B before the device was manufactured. Between 50% and 60% of Synatel's 1994 total manufactured output of these devices were shipped to Peoria, Illinois.

That these devices were targeted for the American market was admitted by Synatel's sales and marketing director. The devices left the Synatel plant with the 4B Elevator Components decals already on them, showing the address of the Peoria, Illinois, company. In the shipping boxes when the M700 devices left Synatel were instructions on installation and use by the ultimate consumers. These instructions were developed by Synatel to comply with American standards, regulations and consumer expectations.

Synatel admits manufacturing the particular M700 device involved in this case in late 1993. Braime purchased the M700 device from Synatel but only stored it for a day before the device was shipped to the United States. It was sold by 4B to an installer in Boone, Iowa, who installed it at the Gowrie, Iowa, Consolidated Cooperative in early 1994. During the pre-dawn hours of October 20, 1994, during the grain harvest, Mark VandeLune was working at the Gowrie Co-op as a truck driver. He was badly burned in an explosion caused by the ignition of grain dust near a slipping elevator belt. The explosion resulted in part from the failure of the M700 to shut down the grain elevator belt at a critically dangerous time, the very time when this device was intended to monitor and disable a malfunctioning grain elevator. An independent lab tested the Synatel alarm system after the explosion. Its experts found the device defective in 3 areas: (1) the 10% loss of motion alarm malfunctioned; (2) the 20% loss

of motion shut-down feature was designed to require affirmative action to install it, rather than being designed in a fail-safe mode; and (3) the warnings and instructions were defective.

REASONS FOR DENYING THE WRIT

A. Synatel has misstated the facts in its Petition.

Synatel has misrepresented vital facts in its Petition. The misrepresentations include the use of the words "unrelated entities" in describing the sequence whereby this device was developed and marketed in America. There was no factual dispute that 4B, an American company, worked closely with Synatel to create, test, market and distribute this device in America. The clinching fact is the 4B Elevator Components, Ltd. decal on the device as it left Synatel's plant. The consumer upon opening the box with this M700 would find it to bear only one address and company name, that of the Peoria, Illinois, distributor.[1] Synatel's plant in England welcomed 4B representatives during the market development stage of the M700 product line. The two companies exchanged visitors on several occasions. A European version of this speed-switch already existed. The modification of that device by

[1] The M700 devices also had a small round red owl decal on them, with "Made in England" written on the decal, but no identification of the Synatel company. It was learned during discovery in this case that the red owl is indeed a logo of Synatel's. However, with only the Illinois address and company name of 4B on the device, there was nothing on the M700 to inform the consumer that it was anything but a 4B product.

Synatel was triggered by the adoption of an O.S.H.A. regulation requiring elevators to install monitoring devices that would automatically shut down the elevator's grain leg when motion decreased by 20%.[2]

The misrepresentations by Synatel include the characterization of the relationship between Synatel and the American grain elevator alarm market as "fortuitous and incidental." This device was designed for the American market, labeled with a decal for Peoria, Illinois, distribution, with instructions written for American installers, all done at the Synatel plant in communication with 4B. That there was a deliberate plan to distribute this device to midwestern grain elevators from a site 80 miles from the Iowa border is undisputed,[3] yet Synatel continues to misrepresent this as "fortuitous and incidental." The misstatements in Synatel's argument can be seen in the inherent contradiction between its development of the product instructions referring to O.H.S.A. legal compliance, then arguing that Synatel did not intend to avail itself of the American laws. The purpose of this product

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[2] 29 C.F.R. Sec. 1910.272(q)(5).

[3] Discovery revealed distribution of Synatel motion sensors through distributors in St. Louis and in Boone, Iowa, only 35 miles from Gowrie where this explosion occurred. Both the St. Louis and Boone, Iowa, distributors obtained their Synatel devices from 4B Elevator Components in Peoria, Illinois. These distributors counted sales of the Synatel alarm systems "in the thousands" to grain elevator customers in Iowa and this region. In fact, the Gowrie Co-op installed 3 Synatel motion monitors in late 1992 or early 1993, then replaced one with the Synatel device involved in this case in early 1994, then replaced that with a Synatel M500A in 1995.

was to comply with American laws. Certainly Synatel cannot complain that is now subject to those laws.

In response to Synatel's claim that the facts here show "incidental and fortuitous" contacts through "independent activities of a number of unrelated entities many times removed from Synatel," Plaintiffs ask rhetorically, "What did Synatel expect to happen to this product?" First, the deal was struck with 4B and its parent Braime before the device was manufactured. There is nothing unforeseeable nor unrelated about the sale and shipment to Braime and 4B. Next, 4B sold the device to a repair man dealing in grain elevator repairs for installation in a midwestern grain elevator. Again, there is nothing unforeseeable nor unrelated about that sequence. The product ended up exactly where Synatel targeted it, in a grain elevator in the midwest. Foreseeability is not the full answer to the jurisdictional question. Rather, here there were many deliberate acts by which Synatel "purposefully availed itself" of the benefits of the forum state, a pattern of deliberate design, development, marketing and distributing thousands of motion sensor devices in the midwestern grain elevator market.

The Eighth Circuit Court correctly applied these facts to the established law. In *Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610 (8th Cir. 1994), *cert. den. sub nom. Hosoya Fireworks Co. v. Barone*, 513 U.S. 948 (1994), that Court held that a manufacturer who "poured its products into regional distributors throughout the country" cannot argue that it "had no idea its products were being distributed into neighboring states." Concerning the supposed burden of litigating claims in American courts, the *Barone* court stated:

> Although a generation has not quite passed since *World-Wide Volkswagen*[4] was decided, the acceleration in the internationalization of commerce is apparent. In this age of NAFTA and GATT, one can expect further globalization of commerce, and it is only reasonable for companies that distribute allegedly defective products through regional distributors in this country to anticipate being haled into court by plaintiffs in their home states.[5]

The Eighth Circuit recognized and correctly applied this Court's decision in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985), that the manufacturer purposefully directed its activities at residents of the forum state, and the suit arose from those activities. Synatel specifically created this product for the American midwestern grain elevator market. Synatel cannot now complain it has been unforseeably and unfairly haled into the American midwestern courts. It does not offend the notions of "fair play and substantial justice" to hold Synatel accountable for its grain elevator monitor in the leading grain producing state in the nation. Thus the tests of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and the plurality opinion of *Asahi Metal Industry, Ltd. v. The Superior Court of California*, 480 U.S. 102 (1987) are satisfied.

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[4] *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

[5] 25 F.3d at 615.

B. Plaintiffs have met their burden of making a prima facie showing of jurisdiction.

Synatel's Petition challenges the Eighth Circuit Court's application of facts as erroneous. As recognized by the Eighth Circuit Court, Plaintiffs at this stage in the proceedings have the burden only to show a prima facie case of jurisdictional facts. *Dakota Industries, Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384, 1387 (8th Cir. 1991). Facts are to be viewed in the light most favorable to the Plaintiffs. *Id.* The proof at this stage certainly shows a prima facie case.

C. Synatel cannot sustain a claim for relief for indemnity against Braime, and thus its argument about the burden of litigating a third-party claim is moot.

There are two misstatements of law in Synatel's third brief point: (1) there is immunity from suit in Iowa for mere distributors such as Braime. Section 613.18(1)(a), Iowa Code (1997), and (2) in its footnote 7, Synatel incorrectly states that the statute of limitations in Iowa is 15 years from date of installation of the product. On the second point the statute of limitations for personal injury actions in Iowa is two years. Section 614.1(2), Iowa Code (1997). On the first point, the proof is contained in the Eighth Circuit Court's ruling as to dismissed Defendant 4B. The Eighth Circuit held that Plaintiffs could not sustain a claim for relief against 4B due to a combination of lack of duty and immunity from suit as a mere distributor. *See* Appendix A, pages 2a – 7a. It is undisputed that 4B is a wholly owned subsidiary of Braime. 4B was the seller of this device. Braime did nothing more than hold

the product overnight in its warehouse before shipping it to 4B in a pre-arranged business deal. *See Bingham v. Marshall & Huschart Machinery Co.*, 485 N.W.2d 78 (Iowa 1992). Braime's involvement is entirely passive, where Synatel's is active. Indemnity might exist if the reverse were true, that is the passively negligent Braime were bringing a third-party action against the actively negligent Synatel. *Iowa Power and Light Co. v. Abild Constr. Co.*, 259 Iowa 314, 144 N.W.2d 303, 309 (1966). There is no common basis for liability to support a claim for contribution or indemnity from Braime. *Allied Mutual Ins. Co. v. State*, 473 N.W.2d 24, 27 (Iowa 1991); *Rees v. Dallas County*, 372 N.W.2d 503 (Iowa 1985). Synatel cannot succeed on a claim for indemnity due to Braime's special defense as a mere distributor under Section 613.18(1)(a), Iowa Code (1997). *Iowa Power and Light v. Abild Constr. Co., supra*, at 310.

CONCLUSION

The Eighth Circuit has correctly applied the facts of this case to the established law. Jurisdiction over Synatel does not offend the notion of fair play. Synatel's Petition should be denied.

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Respectfully submitted,

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